

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

# LEOLA EFFLAND

Claimant

VS.

## MID-KANSAS SENIOR SERVICES

Respondent

AND

## ALLIED MUTUAL INSURANCE

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 189,584

## ORDER

Claimant and the Kansas Workers Compensation Fund appeal a January 31, 1995 Award entered by Administrative Law Judge George R. Robertson. The Appeals Board heard oral argument on June 20, 1995.

## APPEARANCES

Claimant appeared by and through her attorney, Jan L. Fisher, Topeka, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Jeffrey E. King, Salina, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Norman Kelly, Salina, Kansas. There were no other appearances.

## RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

## ISSUES

Claimant asks the Appeals Board to review the findings relating to the nature and extent of claimant's disability. The Kansas Workers Compensation Fund asks for review of the finding that the respondent had the requisite knowledge of a previous handicap.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the claimant sustained a twenty-five percent (25%) permanent partial general impairment. This Order modifies the finding by the Administrative Law Judge who had found a fifteen percent (15%) permanent partial general impairment.

Claimant reinjured her knee on April 16, 1993 when she grabbed a patient who appeared to be falling. Claimant had undergone surgery for her knee in March of 1993 and then returned to work only a short period before the injury which is the subject of this claim. The subject injury required a second surgery. Claimant also developed low back pain which she and Dr. Koprivica attribute to the altered gait resulting from her knee injury.

The disputes in this claim focus primarily on whether claimant suffered any low back injury and whether she was entitled to benefits for a general body disability or limited to a scheduled injury to her lower extremity. The Administrative Law Judge found, and the Appeals Board agrees, that the evidence establishes that claimant did sustain injury to her low back as well as the knee. This conclusion is supported by claimant's testimony as well as that of Dr. Koprivica.

Claimant returned to work at a comparable wage following her injury. There is no evidence which would overcome the presumption of no work disability and the award must be based upon functional impairment. K.S.A. 1992 Supp. 44-510e. Dr. Koprivica provides the only evaluation of the general body functional impairment. He rated claimant's knee impairment at thirty percent (30%), which he converted to twelve percent (12%) of the whole body. He then found a fifteen percent (15%) impairment of the whole body for the low back condition. He combined the two to arrive at his rating of twenty-five percent (25%).

The Administrative Law Judge indicates in his Award that he is adopting and he agrees with the findings by Dr. Koprivica. However, he then awards a fifteen percent (15%) permanent partial general impairment. Whether this resulted from an error in reading or was, instead, an adjustment to Dr. Koprivica's rating does not appear in the Award. From a review of the record as a whole, the Appeals Board finds that Dr. Koprivica's impairment rating of twenty-five percent (25%) of the body more accurately represents the impairment sustained. Accordingly, the Appeals Board finds that the Award of the Administrative Law Judge should be increased from fifteen percent (15%) to twenty-five percent (25%) permanent partial general impairment.

(2) The Appeals Board agrees with the finding by the Administrative Law Judge that the respondent had requisite knowledge of a preexisting impairment. Respondent's supervisor, Pam Gordon, testified she was aware of knee problems claimant had prior to the current injury. She knew claimant had problems beginning in August 1992 and had undergone surgery. Claimant had, in fact, taken time away from her work for respondent for the surgery. Ms. Gordon was aware that upon claimant's return from work she was not getting around well and had instructed claimant not to do anything that might hurt her. She indicates claimant was not doing well after the surgery and was not pleased with the results of her surgery. In spite of this knowledge, Ms. Gordon indicates she did not consider

claimant handicapped because claimant was not in a wheel chair or blind. The Appeals Board does not consider Ms. Gordon's definition of handicap controlling for purposes of Workers Compensation Fund liability. The Act does not require a handicap as serious as blindness or inability to walk. The Appeals Board considers claimant's previous injury and claimant's knowledge of that injury adequate knowledge to support the imposition of liability on the Kansas Workers Compensation Fund. See K.S.A. 1992 Supp. 44-567.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson, dated January 31, 1995, should be, and hereby is, modified as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Leola Effland, and against the Kansas Workers Compensation Fund, for an accidental injury which occurred April 16, 1993 and based upon an average weekly wage of \$102.98, for 10.43 weeks of temporary total disability compensation at the rate of \$68.66 per week or \$716.12, followed by 404.57 weeks at the rate of \$17.17 per week or \$6,946.47 for a 25% permanent partial general body impairment of function, making a total award of \$7,662.59.

As of August 11, 1995, there is due and owing claimant 10.43 weeks of temporary total disability compensation at the rate of \$68.66 per week or \$716.12, followed by 110.57 weeks of permanent partial disability compensation at the rate of \$17.17 per week in the sum of \$1,898.49, for a total of \$2,614.61 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$5,047.98 is to be paid for 294 weeks at the rate of \$17.17 per week, until fully paid or further order of the Director.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jan L. Fisher, Topeka, Kansas  
Jeffrey E. King, Salina, Kansas  
Norman Kelly, Salina, Kansas  
George R. Robertson, Administrative Law Judge  
David A. Shufelt, Acting Director